

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**CONSUMER FRESH PRODUCE, INC.,)
)
 Plaintiff,)
)
 v.) Case No. 1:19-cv-109
)
)
**SPC ERIE COUNTY FARMS, INC.,)
et al.,)
)
 Defendants.)****

MEMORANDUM ORDER

This civil action was commenced on April 16, 2019 and was referred to United States Magistrate Judge Richard A. Lanzillo, for report and recommendation (“R&R”) in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and the Local Rules for Magistrate Judges. The named Defendants are: SPC Erie County Farms, Inc. (“Erie County Farms”); Super Price Choppers Market, Inc., d/b/a SPC Erie County Farms (“Super Price Choppers Market”); Super Price Chopper, Inc., d/b/a SPC Erie County Farms (“Super Price Chopper”); Super Price Chopper Market, Inc., d/b/a SPC Erie County Farms (“Super Price Chopper Market”); Robert Guenther (“Guenther”); Mushtaq Kaid (“Kaid”); and Hussein Awns (“Awns”). Plaintiff alleges that these Defendants breached their contractual duties and violated the Perishable Agricultural Commodities Act, 7 U.S.C. § 499a et seq., when they failed to remit prompt payment for certain perishable agricultural commodities that Plaintiff sold and delivered to them.

Pending before the Court is the Plaintiff’s motion for a default judgment (and related filings) against all Defendants except for Kaid and Awns. *See* ECF Nos. 18, 19, 20, 21; *see also* Compl. Exs. A and B, ECF No. 1. The motion and accompanying brief assert that, despite

Plaintiff having properly served process upon Erie County Farms, Super Price Choppers Market, Super Price Chopper, Super Price Chopper Market, and Guenther, none of these Defendants has answered or otherwise responded to the Complaint as required by Fed. R. Civ. P. 12. The motion seeks judgment in the principal amount of \$83,318.33 plus interest in the amount of \$21,093.58 and attorneys' fees in the amount of \$36,222.57, for a total judgment amount of \$140,634.48.

On November 5, 2019, Magistrate Judge Lanzillo issued an R&R, ECF No. [22], recommending that this Court enter a default judgment in favor of Plaintiff as against *all* Defendants except for Price Choppers Market. The Magistrate Judge found that it was unclear from the record whether the latter entity had been properly served with process. Consequently, Magistrate Judge Lanzillo recommended that the motion for default judgment be denied without prejudice relative to Price Choppers Market, so that Plaintiff might be permitted to renew his motion for default judgment against this Defendant, if warranted, following Plaintiff's submission of additional evidence establishing proper service of process. Objections to the R&R were due on or before November 19, 2019. ECF No. [22].

Only Defendants Awns and Kaid filed objections to the R&R. ECF No. [25]. In their objections, Awns and Kaid correctly observed that the motion for default judgment was not directed against them personally, as they had been engaged in ongoing settlement discussions with the Plaintiff. After Awns and Kaid filed their objections, Plaintiff consummated a settlement agreement with them and dismissed them from the case. Accordingly, the Court will not adopt the R&R to the extent it recommends entry of a default judgment against Defendants Awns and Kaid. In all other respects, however, Judge Lanzillo's reasoning relative to the pending motion for default judgment remains sound.

Accordingly, after *de novo* review of the complaint and documents in the case, together with the report and recommendation and objections thereto, the following order is entered:

NOW, this 7th day of January, 2020;

IT IS ORDERED that the Plaintiff's motion for default judgment, ECF No. [18], shall be, and hereby is GRANTED insofar as it directed against (i) Defendants SPC Erie County Farms, Inc., (ii) Defendant Super Price Chopper, Inc., d/b/a SPC Erie County Farms, (iii) Defendant Super Price Chopper Market, Inc. d/b/a SPC Erie Count Farms, and (iv) Defendant Robert Guenther. To that end, pursuant to Rule 55(b) and Rule 58 of the Federal Rules of Civil Procedure, JUDGMENT is hereby entered in favor of Plaintiff Consumer Fresh Produce, Inc., and against the foregoing Defendants, under the trust provisions of Perishable Agricultural Commodities Act, 7 U.S.C. § 499e(c)(2), in the principal amount of \$83,318.33 plus interest in the amount of \$21,093.58 and attorneys' fees in the amount of \$36,222.57, for a total judgment amount of \$140,634.48.

IT IS FURTHER ORDERED that the Plaintiff's motion for default judgment, ECF No. [18], shall be, and hereby is DENIED without prejudice insofar as it directed against Defendant Super Price Choppers Market, Inc. d/b/a SPC Erie County Farms.

IT IS FURTHER ORDERED that, on or before _____, February 7, 2020, Plaintiff shall file either a renewed motion for default judgment against Defendant Super Price Choppers Market, Inc. d/b/a SPC Erie County Farms or a Rule 41(a) notice that Plaintiff is dismissing its claims against said Defendant.

Finally, IT IS ORDERED that the report and recommendation of Magistrate Judge Lanzillo, issued on November 5, 2019, ECF No. [22], is adopted as the opinion of the Court, to the extent set forth herein.



SUSAN PARADISE BAXTER
United States District Judge

cc: counsel of record

The Honorable Richard A. Lanzillo (via CM/ECF)